STATE OF MICHIGAN

COURT OF APPEALS

ROSEANNE LACOMBE, Personal Representative of the Estate of BERNICE HARKNESS,

Plaintiff-Appellant,

v

LEE MEMORIAL HOSPITAL,

Defendant-Appellee,

and

DR. ROE, NURSE A, NURSE B, and DR. CHARLES M. JONES, formerly known as DR. DOE,

Defendants.

UNPUBLISHED
July 2, 1999

No. 203554
Cass Circuit Court
LC No. 95-000914 NM

Before: Griffin, P.J., and Wilder and R. J. Danhof,* JJ.

PER CURIAM.

Plaintiff appeals by right from an order of the trial court awarding defendant Lee Memorial Hospital[1] summary disposition pursuant to MCR 2.116(C)(10) in this wrongful death and medical malpractice case. We affirm.

We review de novo the trial court's grant of a motion for summary disposition. *Paul v Lee*, 455 Mich 204, 210; 568 NW2d 510 (1997). When reviewing a motion for summary disposition based on MCR 2.116(C)(10), this Court must review the documentary evidence and determine whether a genuine issue of material fact exists, drawing all reasonable inferences in the nonmovant's favor and giving that party the benefit of any reasonable doubt. *Id.* Summary disposition is appropriate only if the court is satisfied that it is impossible for the nonmoving party to support his claim at trial because of a deficiency that cannot be overcome. *Id.*

---

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Because plaintiff's argument focuses only on the alleged negligence of Dr. Jones and not on any negligent acts by defendant or its employees, defendant can be liable to plaintiff only if Dr. Jones was its agent. A hospital is generally "not vicariously liable for the negligence of a physician who is an independent contractor and merely uses the hospital's facilities to render treatment to his patients." *Grewe v Mt Clemens General Hosp*, 404 Mich 240, 250; 273 NW2d 429 (1978). "However, if the individual looked to the hospital to provide him with medical treatment and there has been a representation by the hospital that medical treatment would be afforded by physicians working therein, an agency by estoppel can be found." *Id.* at 250-251. Thus, defendant may be liable if it did something to create in the decedent's mind the reasonable belief that Dr. Jones was acting on defendant's behalf. See *Chapa v St Mary's Hosp of Saginaw*, 192 Mich App 29, 34; 480 NW2d 590 (1991); *Sasseen v Community Hosp Foundation*, 159 Mich App 231, 240; 406 NW2d 193 (1986).

Plaintiff first argues that the trial court improperly granted defendant summary disposition because the hospital's agent, Dr. Pound, not the decedent or the decedent's daughter, decided to contact the decedent's oncologist, Dr. Eddy, even though the decedent's admission to the hospital was unrelated to her cancer. We disagree. Plaintiff's argument ignores the fact that Dr. Pound did not in turn contact Dr. Jones, the person who plaintiff asserts enjoyed an agency relationship with defendant. The call from Dr. Pound to Dr. Eddy could not create in the decedent's mind the reasonable belief that a third party, Dr. Jones, was acting on defendant's behalf. Rather, because Dr. Eddy made a personal decision to call Dr. Jones, the belief that would ensue, if any, would be that Dr. Jones was acting on behalf of Dr. Eddy, the decedent's oncologist. See, e.g., *Chapa, supra; Sasseen, supra.* To find that vicarious liability exists because Dr. Pound called Dr. Eddy who called Dr. Jones requires analysis that is too attenuated. "[A]gency does not arise merely because one goes to a hospital for medical care." *Sasseen, supra* at 240.

Plaintiff also asserts that the trial court improperly granted defendant summary disposition because Dr. Eddy did not treat the decedent after her admission; rather, the decedent was treated by Dr. Jones, whom Dr. Eddy contacted, a person with whom the decedent had no prior physician-patient relationship. However, this argument is unconvincing because it ignores the fact that Dr. Jones was caring for the decedent because her doctor referred her case to Dr. Jones and requested him to admit her.

Finally, we reject plaintiff's argument that our decision in *Strach v St John Hosp Corp*, 160 Mich App 251; 408 NW2d 441 (1987), required the trial court to deny defendant's motion for summary disposition. In that case, this Court stated that "the mere existence of an independent physician-patient relationship should not necessarily preclude a finding that the patient reasonably looked to the hospital itself for treatment." *Id.* at 266. We affirmed the trial court's decision to deny the hospital a directed verdict or judgment notwithstanding the verdict because there was evidence on the record from which the jury could have concluded that an ostensible agency existed between the doctors and the hospital. *Id.* at 271. Here, the same showing has not been made.

Because no agency by estoppel can be found, the trial court properly granted defendant summary disposition.

Affirmed.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Robert J. Danhof

[1] This opinion hereinafter uses the singular term "defendant" to refer to Lee Memorial Hospital.